

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
TERRANCE OWENS,	:	BANKRUPTCY CASE
	:	NO. 04-17420-WHD
Debtor.	:	
_____	:	
	:	
ORLANDERS LOONEY	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 05-1706
v.	:	
	:	
TERRANCE OWENS,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

On October 21, 2005, the Court granted the Plaintiff's motion to compel discovery in the above-captioned adversary proceeding. The Court directed the Debtor on the Plaintiff's Motion for Contempt and Discovery Sanctions. In that Order, the Court directed the Debtor to be more specific in answering an particular interrogatory regarding bartering and to produce tax returns. On February 2, 2006, the Court entered an Order on the Plaintiff's Motion for Contempt and Discovery Sanctions. In that Order, the Court declined the Plaintiff's request to impose sanctions on the Debtor and directed him to produce on or before March 10, 2006 his W-2 or 1099 forms for the relevant tax year and to provide a complete breakdown of any non-cash income received in exchange for his services.

On February 15, 2006, the Debtor filed a response to the Plaintiff's discovery requests in accordance with the February 3rd Order. To this response, the Debtor attached various W-2 forms for both the Debtor and his wife and an earned income credit form for tax year 2001. On March 23, 2006, the Plaintiff filed the instant motion in which he asserts that the Debtor has still not provided the Plaintiff with complete tax returns or transcripts for the relevant tax years and that the Debtor did not properly answer the interrogatory regarding non-cash income as directed by the Court in its February 3rd Order. The Plaintiff moves the Court to strike the Debtor's answer and enter a default judgment and seeks an award of \$390 in attorney's fees.

The Debtor has responded that he has produced complete copies of his tax returns, as filed, for all relevant years and that he has produced everything within his possession. The Court presumes that the Debtor is contending that he filed Form 1040A and was not required to file any schedules.¹ If this is true, the Plaintiff's complaint that no schedules were produced lacks merit.

The Court is unclear from the Plaintiff's motion whether the lack of schedules is the only defect. The Plaintiff simply states that the Debtor failed to comply with the Court's Order and did not produce complete returns. The Court is uncertain as to whether the Plaintiff contends that tax years are missing, W-2s are missing, or just that no schedules were attached. It may be that the Plaintiff is complaining that the Debtor did not obtain copies of the tax returns from the IRS. However, the Court did not specifically order the Debtor to obtain filed copies of the tax returns

¹ A taxpayer filing Form 1040A is not permitted to itemize deductions. Accordingly, Form 1040A does not require or permit the filing of Schedule A. *See* Instructions to Form 1040A, www.irs.gov. Form 1040A includes three schedules: 1) interest and ordinary dividends; 2) child and dependent care expenses; and 3) credit for the elderly and disabled. The Court has no reason to believe that the Debtor filed any of these schedules along with his Form 1040A.

from the IRS. The Court simply instructed the Debtor to provide copies of the returns, as filed, which the Debtor construed to be his copies of the return that he filed with the IRS. If the Plaintiff is actually missing tax years or W-2s or has a reasonable and credible basis for suspecting that the copies of the returns produced by the Debtor are some how falsified and are not consistent with the returns filed with the IRS, the Court will consider, upon request, ordering the Debtor to obtain copies of the actual filed returns from the IRS. If this is the case, the Plaintiff shall be as specific as possible as to what exactly the Plaintiff contends is incomplete and exactly what the Plaintiff believes is missing.

In response to the Court's directive to more specifically answer the interrogatory, the Debtor responded that "Debtor's bartered income is approximately \$500 per month in monetary value." The Debtor also responded that this income takes the form of "housing, transportation, and food" and is provided by the church community. The Court agrees with the Plaintiff that this response falls short of the Court's directive to provide a "breakdown of exactly what items or services are provided . . . and the value of these items or services." However, in response to the Plaintiff's motion, the Debtor argues that his response is complete and that his non-cash income varies from month to month, depending on the level of support from the community. The Court agrees with the Debtor that this information is sufficient for the purposes of this interrogatory. The Debtor's actual past income should be reflected in the Debtor's filed tax returns and, if the Plaintiff wishes to delve deeper into this area, the Plaintiff is free to depose the Debtor or any members of his church who may have knowledge of the Debtor's compensation arrangement or to subpoena supporting records from the New United Baptist COGIC, Inc.

At this time, the Court finds that the Debtor substantially complied with the Court's

February 3, 2006 Order. For this reason, the Plaintiff's Motion for Contempt and Discovery Sanctions is hereby **DENIED**.

IT IS ORDERED.

At Newnan, Georgia, this _____ day of May, 2006.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE